

MINUTES
Montana Fish, Wildlife & Parks Commission Meeting
Fort Keogh Research Station
243 Fort Keogh Road – Miles City, MT

OCTOBER 19, 2006

Commission Members Present: Steve Doherty, Chairman; Tim Mulligan, Vice-Chairman; John Brenden; Shane Colton; Vic Workman.

Fish, Wildlife & Parks Staff Present: Jeff Hagener, Director, and FWP Staff.

Guests: See October 19, 2006 Commission file folder for those who signed in.

Topics of Discussion:

1. **Opening - Pledge of Allegiance**
2. **Approval of August 31, 2006 Commission Conference Call Minutes**
3. **Approval of September 13, 2006 Commission Meeting Minutes**
4. **Approval of Commission Expenses through September 30, 2006**
5. **Clarification of Public Comment Opportunities at Commission Meetings**
6. **2007 Commission Calendar**
7. **2007 Annual Rule for Sale of Non-Resident Combination Licenses – Final**
8. **MT Wildlife Federation Petition to Regulate ATV Use for Hunting - Endorsement**
9. **Peregrine Falcon Harvest Rule – Endorsement**
10. **2007 Fishing Regulations – Final**
11. **Shields River FAS Acquisition in Park County by Donation to FWP– Final**
12. **Wing Dam FAS Donation / Expansion – Endorsement**
13. **Exotic Wildlife Classification for Importation/Possession Rules– Final**
14. **I-154 – Commission Discussion - Final**
15. **Open Microphone – Public Opportunity to Address Additional FWP Issues**

1. **Opening - Pledge of Allegiance.** Chairman Doherty called the meeting to order at 8:00 a.m. and led the Pledge of Allegiance.

2. **Approval of August 31, 2006 Commission Conference Call Minutes.**

Action: Colton moved and Workman seconded the motion to approve the minutes of the August 31, 2006 Commission conference call. Motion carried.

3. Approval of September 13, 2006 Commission Meeting Minutes.

Action: Colton moved and Mulligan seconded the motion to approve the minutes of the September 13, 2006 Commission meeting. Brenden noted that he had not been in favor of carrying the I-154 initiative forward to the October commission meeting for discussion, and Workman noted that he was not present. *Motion carried.*

4. Approval of Commission Expenses through September 30, 2006

Action: Colton moved and Mulligan seconded the motion to approve the Commission expenses as presented. Motion carried.

5. Clarification of Public Comment Opportunities at Commission Meetings. **Bob Lane, FWP Chief Legal Counsel**, explained that almost every item that comes before the Commission has already been through some form of public comment. FWP recommends continuing in the present fashion on everything except season settings, and that exception is because public comments are heard before tentatives are adopted and when finals are adopted. Statewide meetings are held to receive comments.

Currently, the department staff typically provides an overview, makes recommendations, and outlines alternatives for consideration. The Commission then deliberates the recommendations and formulates motions. Public comment is once again accepted. If a motion is changed based on comment, the cycle begins again with amended motions and additional public comment.

Lane explained that the recommendation is for the Commission to hear staff proposals, receive public comment, then go into executive session to make their final decisions. Once the Commission goes into executive session, no more will be heard from the public unless specific questions need responded to by either the staff or the public.

The second part of the recommendation deals with season setting comment opportunities. FWP already hosts several statewide hearings, and accepts e-mail and written comments on proposals, affording the public considerable opportunity to offer their opinions. Public comment at Commission meetings represents only a small fraction of the public, and it is generally felt that their comments are given undue influence. So the recommendation is to end the public comment period before the final season setting meeting, and not take further comments at the final season setting meeting. It must be made very clear to the public what the process will be. Lane stated that this would be Commission policy - not an Administrative rule.

The issues must be framed broadly enough so that public comment can encompass all possibilities that might be considered through discussion. There have been instances where the Commission has come up with proposals outside of the scope of what was recommended by FWP and presented for public comment, and by law those proposals must be within the scope of what the public was allowed to comment on. Final decisions must be within the scope of what went out to the public. Again, the public needs to be aware of what the Department is planning to do.

Chris Smith, FWP Chief of Staff, stated that FWP is looking into posting the Commission meeting agenda cover sheets on the FWP website. The timing must be coordinated with the Commissioner's receipt of them so the public does not see them before the Commission does.

Lane said it would be appropriate to write this procedure into the form of a policy and then go out for public comment.

Action: Mulligan moved and Colton seconded the motion to direct FWP to develop a policy that reflects the public comment process as discussed, then present this policy to the public for comment.

Doherty asked for public comment. There was none.

Action on Motion: Motion carried.

6. 2007 Commission Calendar- Tentative. Director Hagener explained the proposed schedule was drafted after review of events already scheduled for 2007. Since the Commission met in Regions 1, 2 and 7 in 2006, it was suggested to meet in three of the remaining four regions in 2007. Dates must be established as soon as possible. Rescheduling and relocating meetings causes confusion and inconvenience to staff and to the public.

Butte, Havre, Columbus and Glasgow were mentioned as possible meeting sites for 2007. Some meetings are best held in Helena depending on agenda topics and the number of staff required. Everyone will review their calendars to make final recommendations at the December meeting so the calendar can be published and posted on the website.

7. 2007 Annual Rule for Sale of Non-Resident Combination Licenses – Final. Hank Worsech, FWP Licensing Bureau Chief, reviewed the recommendations that were presented to the Commission in September, and subsequently approved. The Variable-Priced Licensing Advisory Council met and recommended a quota of 5,000 B-10 Outfitter Sponsored Big Game Combination licenses at a fee of \$1,195, a quota of 2,200 B-11 Outfitter sponsored Deer Combination licenses at a fee of \$845, and a fee of \$1,195 for the Outfitter Sponsored Elk Combination licenses.

In accordance with statute, the fees for these licenses must be set at a market rate intended to sell as close to, but not more than, an average of 5,500 B-10 and 2,300 B-11 license each year, over a five year period. Since there was an oversell in both categories in 2006, the quotas were reduced in order to meet the five-year average.

Action: Brenden moved and Mulligan seconded the motion to adopt the 2007 Annual Rule for the Sale of Nonresident Combination Licenses as proposed.

Doherty asked for public comment.

Robert Allen said he came from Ohio thirty years ago, and all his friends from back there cannot afford to hunt here. Montana limits the number of licenses, so why such high prices. Hates to see that only rich folks can hunt.

Keith Hall said non-resident licenses are limited to guided hunters who have the money. Youth hunters need a secondary license. Is in favor of what is being done as long as the draw licenses are kept as they are. People with guided licenses can afford the higher prices. Wants to see a draw license and not just for the residents.

Hagener stated that there is a half-priced non-resident youth license, and some are still available.

Mulligan said the Commission only has authority to change the prices on outfitter-sponsored licenses.

Brenden said there is the five-year-average parameter that this must fit into, and this is only the second year of that five-year average. B10 and B11 are the only licenses FWP commission has the authority to raise. It is not just limited to wealthy people hunting – it is a vacation for many people.

Action on Motion: Motion carried.

8. Montana Wildlife Federation (MWF) Petition to Regulate ATV Use for Hunting – Endorsement. The MWF submitted a petition to FWP for regulation of ATVs, and the four specific recommendations they felt would mitigate negative impacts from improper use of ATVs while hunting are:

- 1. ATV's should only be allowable during the State of Montana hunting season in order to retrieve downed big game and must abide by all land management agencies travel requirements while retrieving game. Exceptions to these requirements could include:*
 - a. All private land, as landowners have the right to set their own travel rules*
 - b. Any roads that allow for full-sized vehicles.*
- 2. Require that all ATVs used for public land hunting be registered as a motor vehicle and display an oversized license plate which can be identified from 100 yards using visual aids.*
- 3. Seek legislative assistance to amend the current Hunter Harassment Law to add language and penalties for the prosecution of individuals who use an ATV to interfere with another hunter's lawful hunt.*
- 4. Restrict the use of ATVs to the same roads as full-sized vehicles during the hunting season unless provisions/exceptions are made by managing agencies for game retrieval at specified times.*

Don Childress, FWP Wildlife Division Administrator, reminded the Commission that they had denied this petition at the August meeting, held in Missoula, but they had directed FWP to identify and define the issues for further discussion at this meeting. Childress stated that there are already laws in place that address use of ATVs for hunting. Shooting from an ATV, or other vehicle, is prohibited, and statute 87-3-125, MCA, says that motor-driven vehicles can only be used on established roads or trails except for limited big game retrieval. Restrictions on motor-driven vehicles only apply on federal lands if the federal agency specifically requests or approves state enforcement. Federal agencies have only given this approval through travel management plans that FWP has signed onto, which then allows the Department to enforce off-road or off-trail travel during the hunting season. Registration, decal, and license requirements for ATVs are also set by statute.

Treasure State Alliance, an organization representing Montana's motorized recreationists, shares some of the same anxieties as the Montana Wildlife Federation (MWF), however they have three primary concerns with MWF's proposal. First, they feel that MWF's recommendations usurp the authority of other federal land management agencies over whose jurisdiction vehicle use falls. Second, if this step is taken, all human access to federal lands, including horses and street vehicles, may be at risk. A third concern relates to enforcement. If there are regulations in place, they must be enforced consistently among all motorized vehicles.

Childress said that during discussions, concerns were voiced as to why there should be a difference in decals between hunting use and other recreational use as far as decals since they are statutorily mandated. Also ATVs are a fairly new technology, and in no other areas are hunting technologies limited to federal or state lands. Hunter harassment is definitely an issue surrounding the use of ATVs.

FWP has looked at a lot of different things including what other states are doing to address this issue. Idaho has a regulation that deals with use of ATVs in only a portion of their hunting districts. North Dakota and Washington do not allow loaded weapons on ATVs. Some states have not yet dealt with it. FWP addresses resource issues that can be identified, so impacts to wildlife and to off-road use will need to be determined.

If the Commission moves forward with approval of the petition, the two options by which to approach this issue are the Administrative Rule process or the biennial rule process. The rule-making process would need to begin immediately if a rule is to be included in the 2007 hunting regulations, which will be published early next spring. The process will need to provide a great deal of opportunity for public input since the scope of the issue is broad. Some user groups feel there are legal ramifications in setting regulations such as what has been requested.

Either rule-making process will overlap with the upcoming legislative session, which means an increased staff workload. It would be very difficult to conduct a public process on an issue as large as this during the session, so the expectation to complete it for the 2007 hunting season is unlikely, however if the Commission decides to move forward, the Department will accommodate those wishes. As this is a statewide issue, the public comment process will need to be extensive.

The Forest Service is going through a travel management process that is open to public participation, and the Bureau of Land Management has their own process to publicly address such issues. Both agencies are aware of the level of interest from both sides.

Jim Kropp, FWP Enforcement Division Administrator, said this is a complex issue involving many perspectives. There is an increase in registered machines, and the OHV industry has increased significantly. Budget restraints limit FWP's ability to get enforcement on the ground. FWP receives a small percent of OHV registration monies for enforcement, but primarily, the enforcement operations expenses are carried by Montana sportsmen. The money from license plate registrations, approximately \$14,000, covers about 20 hours annually for each game warden, and a couple of tanks of fuel in their ATVs. There are millions of acres of public land that needs to be covered.

Kropp said FWP works closely with both the USFS and BLM enforcing their travel management plans, however that is limited primarily to the hunting season. FWP writes about 150 tickets a year for OHV violations, as does the Forest Service. Kropp said they see a fair amount of hunters who walk into a hunting area and harvest an animal then go in and pick it up on an ATV in the dark, and sometimes they just take the animal in the dark. The USFS and BLM write tickets, as does FWP, but the fines are not that significant in deterring illegal activity. Money is generally not a deterrent; people choose to take chances on getting caught. Taking away hunting privileges seems to be most effective.

Both the Forest Service and BLM allow no off-road travel unless specific forest management plans stipulate otherwise. In order to retrieve game, hunters must bring their game to those trails. There are many trails in Montana that are not included in management plans, therefore there are many places where ATVs can go to get close to where they need to be.

Mulligan stated he was not supportive of this because there is no money associated with it for enforcement. He felt serious consequences for violations would be an incentive for people not to violate the law.

Colton asked if a larger decal would help for identification purposes. Kropp said probably not because street legal ATVs already have license plates, and off highway ATVs have decals with numbers so enforcement can obtain owner registration information from those. However, the decal/license number doesn't necessarily mean that the registrant was operating the machine, so a lot of time is spent trying to track down who may have been operating it.

Doherty asked if there is a presumption law that states that a person who has a machine registered to him is actually the one using it, and it is his responsibility to prove that he had loaned it to someone. Kropp replied there was no law, it is up to FWP to prove who was operating the ATV. He said if the law was written so that the owner was responsible, it would certainly be much easier for enforcement.

Doherty said he was aware of legislation that created a law of presumption on cars that reads that the owner of the vehicle is considered the driver unless he can prove he loaned it out. That law was passed because of cars passing school busses illegally. Maybe that kind of legislation on ATVs would help enforce violations.

Colton said if you spend any time in the field, you see ATV abuse. He has observed them traveling fast, clearly chasing game. He said not to diminish the fact that there are problems taking place simply because enforcement is difficult. The Commission should have authority, without legislative action, to require a large decal that is readable from a distance in order to distinguish between ATVs used for hunting and those not used for hunting. People behave better when they think they can be identified.

Hagener asked if Colton is proposing a second decal in addition to what they have now. Colton replied yes, that it would be an identifier secondary to the current decal. The owner would go to the regional office to register that he is a hunter with an ATV and receive the secondary decal.

Brenden said in theory it is a good idea, but practically, it will not deter people who want to break the law. He feels more regulations indicate that everyone is presumed guilty before doing anything wrong. He feels legislative action is required.

Doherty asked how many calls the TIPMONT program receives regarding ATVs. Kropp replied that it is in excess of one hundred and fifty per year. Mulligan asked if there is a law against carrying a loaded weapon on an ATV. Kropp said there is not, however shooting from an ATV is illegal.

Mulligan said there are increasing problems with ATVs that need to be dealt with. There are two parts to this issue – one is the social aspect, and one is the violations aspect. The proposal by MWF to stop ATV use on designated trails becomes a social issue. He is concerned that a secondary decal would penalize every owner of an ATV because of a select few. He would rather see stiff penalties, such as the loss of hunting licenses and confiscation of the animal. He feels legislative action is necessary.

Doherty asked for public comment.

Daryl Olson, MWF, said seventeen organizations unanimously agreed on this petition. This is a fair chase issue and not a trails issue. Other motorized vehicles are regulated, so it is reasonable that ATVs should be too. There are ethics problems and interference with lawful hunters. One law that says you cannot hunt from a motorized vehicle would solve ninety percent of the problems if it included “intent to hunt”. If a hunter does a game violation (ATV) that interferes with another hunter, add on a violation for hunter harassment. Use the Bear Aware program as a template for ATV educational purposes. Require people to take an online course on ATV use as part of the permit requirements.

Bob Allen said the only thing that is not fair is the fact that you cannot retrieve game with one.. Retrieval would stop 70-80 percent of violations.

Gary Carvajal, Montana Bowhunters Association (MBA), said MBA has been concerned for a long time about ATVs, and they would like to see stiffer fines and penalties imposed on those folks who do not abide by the rules. Boats are required to use larger letters on their hulls for identification, so why not require ATVs to display big enough numbers that they can be identified from a distance. Impose stiff fines, or make it so they lose their ATV if they have multiple violations.

Keith Hall said an ATV is a tool. Four-wheel drives were accused of ruining things back in the ‘60s. ATVs do not ruin hunting – only those who break the rules do. Everyone uses technology. Don’t pick on one group just because one faction doesn’t like it. His ATV leaves less impact than his pickup truck does. As far as decals, he said his ATV has a decal from Washington (where he bought it), a FWP permit, a permanent sticker, and a license plate. Cannot make laws that cannot be enforced. There will always be people who break laws.

Action: Workman moved and Brenden seconded the motion to take no action on the petition.

Colton said this is a real issue, but there is little that the Commission can do. Fines could be increased, and educational tools can be expanded.

Mulligan felt the Commission should not take action on any of the MWF recommendations at this point, but that it would be appropriate for FWP to continue coordinated discussions with the public and federal and state entities for potential legislative action. FWP does not have the enforcement resources needed. He supports the idea of a voluntary “bear aware” type of program on the website.

Childress reminded everyone that the motion is regarding initiating rulemaking.

Doherty said this is a contentious issue. It is important to recognize the rights of the people who use ATVs appropriately. If there are legislative changes that can be done, such as larger decals, or a presumption that the owner of the ATV must prove he was not the person operating the ATV illegally, perhaps some things, such as retrieval, could be considered. He did not hear from the petitioners that they want to ban ATVs, but did hear that because of increased use there will be increased conflicts. FWP and the Commission have a responsibility to look into this and assure that fair chase hunts are promoted, that enforcement is possible, and that it is possible for folks who want to use these vehicles in a legal and responsible way to do so. This needs done before a negative reaction occurs at some point that would necessitate banning ATVs. He proposed that the department assemble the stakeholders, and lay out a very specific plan that would be acceptable to everybody involved.

Action on Motion: Motion carried. Three in favor – two opposed (Doherty and Colton).

Action: Colton moved that FWP look at incorporating ATV use into hunter education and to continue to collect data to understand the nature of the problem. Mulligan seconded the motion and added an amendment to add voluntary on-line training. Motion carried.

9. Peregrine Falcon Harvest Rule – Endorsement. Jeff Herbert, FWP Wildlife Division Assistant Administrator, explained that the Department is looking for approval to initiate the development of administrative rules that would authorize limited take of nesting peregrines for falconry. Peregrine falcons were officially delisted at the federal level in 1999, and at the state level in 2005. The recovery goal for Montana was 20 active nests. A 5-year post-delisting monitoring program was mandated under the ESA to ascertain the status and trends of peregrine numbers. The Montana Peregrine Falcon Working Group coordinated that survey effort from 1999 – 2003.

In 2006, the survey documented 65 active nests that fledged 147 young from those nests. It is believed that when the population is recovered and fully redistributed, it will continue to grow. Monitoring protocols call for intensive surveys every 3rd year until 2014 and the 2006 effort fit within this protocol.

In 2004, the US Fish and Wildlife Service completed a final Environmental Assessment that considered the take of nestling peregrine falcons in 12 western states. Implementation guidance provided by the USFWS must be in effect as part of the permitting process for taking peregrine falcons. Stipulations include the amount of disturbance at the nest site, the age of the young (minimum and maximum), the requirement that at least one young must be left in the nest from which a nestling has been taken, and banding and reporting requirements for any birds taken.

The USFWS has published allowable take allocations in the Federal Register (2004-2006) prescribing the number of nestling birds that may be removed in each state for falconry purposes. The take is limited to no more than 5% of the observed number of fledged young. Recent assessments indicate that this level of take would result in a less than 1% rate of change to population growth. Based on this, Montana has been assigned a current allocation of no more than 4 birds. As with migratory game bird regulations, states must operate within federal frameworks but may choose to impose more restrictive requirements. Falconers must be legally permitted under state regulations in order to be eligible to apply for this opportunity.

The USFWS has recently solicited public comment on a proposal that would delegate falconry permitting processes to the states, which would eliminate the dual state-federal permitting requirement. A second proposal would seek to authorize the limited take of passage peregrines (fledged young) for certain states.

The Montana Falconers Association has requested, based on the status of the population and the existing federal frameworks in place, that the state implement rules to authorize the limited take of peregrine nestlings. Under current Montana statute (87-5-207), non-residents are not allowed to capture raptors from the wild for falconry or captive breeding purposes, therefore only resident falconers would be permitted to take wild peregrines under this proposal. Montana has 90 licensed falconers that include apprentice, general, and master permit classes.

Captive breeding programs were instrumental in the recovery of the peregrine falcon. An average of 31 captive bred young were released per year during the 1981-1998 period. Captive breeding programs have also provided birds to falconers interested in flying peregrines while they were a listed species. Captive-bred peregrines currently sell for approximately \$500 for males and \$750 for females and currently 28 licensed falconers report having a peregrine falcon. The demand for the permitted capture of wild birds will be limited but important to the falconry community.

There are two options from which to choose should the Commission approve this permitted take proposal. The first is to develop an ARM rule, and the second is to adopt an annual rule. The ARM rule process would likely take at least four months to complete, which would not be completed in time for the 2007 season. An advantage to the ARM rule is that the Commission would not have to revisit it each year, while an annual rule would require Commission action and public hearings on quotas and regulations each year.

Potential issues/stipulations that would need to be addressed under either course of action could include but not be limited to:

1. Establishing a limited capture of wild peregrines for falconry purposes.
2. Establishing which class of falconer is authorized to participate.
3. Establishing a quota for the number of birds available for capture (within federal frameworks).
4. Establishing the number of nestlings that must remain in the nest at a capture site (federal regulations require at least one).
5. Establishing a period of time when take is permitted.
6. Establishing which nest sites may be excluded from take due to wildlife viewing opportunities.
7. Establishing an application and selection process for the limited capture permits.
8. Establishing any banding/reporting requirements for peregrines taken from the wild.
9. Establishing any limitation on how often a falconer may be eligible to capture a wild peregrine.
10. Establishing any transferability limitations on birds captured in the wild.

Chairman Doherty asked for public comment.

Chad Cyrus, Montana Falconers Association, recommended moving forward with a limited take. Montana has tripled peregrine goals. Removing DDT helped a great deal in bringing them back. MFA requests 5% of annual production. There are 3,000 pairs nationwide. Take of genetic stock will be

housed in captivity. Most surrounding states that have falcons have already implemented take, and they continue to flourish. Experiments on removing chicks from nests shows a decline in survivability of those left in the nest. USFWS highly regulates falconry. They have come out with two EAs so it is all laid out already. Recommend Commission move forward with this request. Supports the ARM process.

Janet Ellis, Montana Audubon Society, said the Chapter agrees with this rulemaking, but they want to make sure it is an open public process. They have questions, and they want to review the federal EA. They may want a more restrictive option than what the USFWS has established. They support the ARM over an annual rule.

Action: Colton moved and Workman seconded the motion to move forward with developing an Administrative Rule of Montana authorizing the limited take of peregrine falcons for falconry purposes.

Mulligan and Doherty directed FWP to check into commercialization within the EA to make sure there are no biological impacts.

Action on motion: Motion carried.

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Colton said the severe fires in Stillwater County and east of Billings caused problems to the mule deer winter range, therefore there may be game damage issues this winter.

Ray Mule', FWP Region 5 Wildlife Manager, said more than 450,000 acres burned in Region 5 last summer, and essentially all of that consisted of sagebrush habitat, which is a critical mule deer winter range. Because of this, two things may happen - many deer will starve to death, or they will be forced to relocate into areas that create conflicts with landowners. Deer populations must be reduced to a level that is compatible with the new carrying capacity of the burned area. Mule' said if damage hunts become necessary later in the winter, they will be addressed at that time.

The four most severely affected hunting districts are currently restricted to antlered buck mule deer only, but FWP proposes to change that to either sex mule deer A licenses. Adjustments to the B licenses may be proposed after winter surveys if necessary. Those areas are:

520 - west of the Stillwater River outside of the National Forest boundary

560 - outside of the National Forest boundary

575 - that portion west of Highway 78

590 - that portion in Yellowstone and Bighorn Counties

Bob Lane, FWP Chief Legal Counsel, said this is a valid emergency situation. Colton said this is not an overall fix but needs to be done now. Childress added that this is not a damage hunt - game damage hunts are done through a different process that addresses those particular circumstances.

The Commission authorized up to 1,000 antlerless mule deer B-licenses valid for the same areas as listed in the above document. The Dept. will determine how many of these, if any, are to be issued in each of the affected areas. They will be offered on a first-come, first-serve basis to existing B-licenses holders in those HDs. They will be subject to the statewide limit of a total 7 deer B-licenses per individual.

10. 2007 Fishing Regulations – Final. Chris Hunter, FWP Fisheries Division Administrator, explained that major fishing regulation changes are made every four years, and that during the interim years the changes consist of corrections, clarifications, necessary conservation needs, etc. The 2007 regulations are the last of the 4-year time period, and there are no recommended changes to the proposed tentatives.

The proposed harvest increase of Lake Trout on Flathead Lake generated twenty-six comments in opposition. The harvest increase was mutually agreed upon by the Confederated Salish & Kootenai Tribes and FWP in an attempt to improve westslope cutthroat and bull trout populations by reducing lake trout through sport harvest. Fishery managers will be able to measure the impact of increased lake trout harvest. The primary effect will be on sponsored fishing events because the average fisherman doesn't catch that many fish anyway.

Thirty-two comments were received relative to the paddlefish regulations. Hunter said the paddlefish population is of great concern as there has not been substantial reproduction over the last seven to eight years. The intent of the revised regulations is to reduce the harvest but still allow harvest opportunity. The catch and release regulations, the 24-hour closure notice, and the limit of one fish is a step in that direction. Hunter noted that the Glendive Chamber of Commerce is supportive of the regulation changes.

Action: Mulligan moved and Brenden seconded the motion to approve the 2007 fishing regulations as recommended by the Department.

Doherty asked for public comment.

Bob Allen asked about the mortality rate of catch and release, to which Hunter replied that it is amazing how well paddlefish recover. Brad Schmitz, FWP Region 7 Fisheries Manager, said the mortality rate is very low unless they are caught in the gills as the fish slough the hook and scar over. It is recommended that people hold fish and raise them out of the water lengthwise, not by the head and hook.

Steve Schiller, Glasgow, supports the paddlefish regulations.

Steve Hall, Miles City, supports the proposals. He suggested using barbless hooks for catch and release fishing.

Hunter replied that barbless hook requirements have been considered in the past, but given the low mortality rate, barbless hook requirements have not been addressed in the regulations. Colton and Mulligan preferred requiring the use of barbless hooks even though the mortality rate is low. Hunter said they will be included in the next regulation setting process.

Action on motion: Motion carried.

11. Shields River FAS Acquisition in Park County by Donation to FWP – Final. In 2005, FWP was offered a donation of 23.6 acres for public access to the river. The property is approximately six miles south of Clyde Park and seven miles north of the junction of I-90 and Highway 89. The property would primarily provide walk-in access to the river, but would also be available for use as a floating access for hand-carried watercraft. **Chris Hunter, FWP Fisheries Division Administrator**, explained that this is a unique and desirable property. Access to the Shields River has been limited to bridges and road crossings as there are no fishing access sites on the river.

The Environmental Assessment was released in August. The proposal has been met with a great deal of support with the exception of three neighboring landowners who are concerned about the environmental impact and the effects the FAS will have on the value of their land. The Region has attempted to mitigate their concerns by agreeing to hold off on site development until site plans are more fully developed and an environmental analysis is thoroughly conducted.

Action: Mulligan moved and Colton seconded the motion to accept the donation of the Shields River property for use as a fishing access site, and to take incremental steps toward development instead of going forward with the full design and development of projects.

Doherty asked for public comment.

Mark Henckel said there used to be a highway rest area that provided access. Bruce Rich, FWP Region 3 Fisheries Manager, replied that that site is not state owned, and there have been disputes over it in the past.

Colton said it is a “gem of an area”. He encouraged FWP to continue working with the landowners, and suggested posting signs as soon as possible.

Action on Motion: Motion carried. Four in favor – one opposed (Brenden).

12. Wing Dam FAS Donation / Expansion – Endorsement. **Chris Hunter, FWP Fisheries Division Administrator**, explained that Eugene and Jacqueline Ball have offered to donate a 23.6-acre riparian island in the Missouri River to FWP as a fishing access site. The property, appraised at \$77,000, is located approximately 1.75 miles downstream from Cascade on the northwest side of the river, and is directly adjacent to the existing Wing Dam FAS. The nearest fishing access sites are Pelican Point FAS and Dunes FAS, and they are approximately ten miles away. Wing Dam FAS would be expanded through this acquisition, and additional access for floaters and fishermen would be available.

Action: Doherty moved and Mulligan seconded the motion to pursue negotiations with Eugene and Jacqueline Ball of Milton, WV to expand the Wing Dam Fishing Access Site near Cascade, Montana. Motion carried.

13. Exotic Wildlife Classification for Importation/Possession Rules– Final. Senate Bill 442 requires classification of exotic wildlife before importation into Montana, and it also establishes a mechanism for the classification of them. A review committee evaluates petitions for classification of exotic animals, after which they submit their recommendations to the Commission. The classification categories consist of “noncontrolled”, “controlled”, or “prohibited”.

Eileen Ryce, FWP Aquatic Nuisance Specialist, said the public comment period that followed the approval of the tentative rules generated twenty-five comments. Eleven comments were in support, twelve were opposed, and two commented on the language of the rule. Nine comments opposed the classification of short tailed opossum as prohibited, two were opposed to the classification of mute swans as prohibited, and one opposed the classification of *Cebidae* as prohibited.

The “capuchins” (new world monkeys) are not predictable, and because their genetics are close to those of humans, there is a chance of disease transference. The Committee supports the recommendation to prohibit them. Current owners will fall under the grandfather clause, and zoo menageries can still apply for them.

Two comments were received opposing the recommendation to prohibit mute swans based on hybridization since hybrids are sterile and can be easily removed from the wild. The committee’s recommendation was based on competition with native water bird species for forage and nesting habitat and competition and for displacement for breeding and habitat.

Doherty asked for public comment.

Janet Ellis, Montana Audubon Society and member of the classification review committee, said the rule does not prohibit mute swans from being possessed by owners that are grandfathered in. This rule will affect private ponds. Offspring would be a problem in that a few swans would become a large population in time. This will prohibit importation by new owners. They also move around the state – they do not remain in one location.

Frank Todd said if they are large birds and will, of course, compete with the smaller waterfowl for habitat. If Mute Swans are not controlled, they will cause problems in time, but he feels the threat is overblown. Why treat them different than any other species of waterfowl. Hybridization does happen in birds who are kept in captivity. He does not find it reasonable or logical to separate the mute swan from the other species of swan. More regulations are not needed.

Sheila Hancock McKay said she is a third generation birder and wants to pass it on to her son. A qualified breeder is a qualified breeder. All of them study hard to get their federal licenses, spend a great deal of money on their facilities, and educate others. Saying that only a select few can do this is not a good management goal. Rather than grandfathering in a few existing breeders, look at others who may be qualified.

Joe Desoro said he thinks many young people can only handle the mute swans for 4H projects etc. It would be a shame to take that opportunity away. The Mute Swan is docile. He has used them for hatching Trumpeter Swan eggs. He agrees it must be pinioned.

Ryce said the plan is not to prohibit breeding of other exotic waterfowl in the controlled category. All that is required is that they are pinioned or surgically rendered flightless or kept in an aviary net. A 2005 USGS report that was published said Mute Swans were considered one of the most aggressive waterfowl species in the world.

Colton said he is uncomfortable with classifying the mute swan as prohibited as he does not feel they are a huge threat. They have been around a long time. It might be best to defer this decision until more information has been gathered.

Doherty said we are trying to reestablish the trumpeter swans, and thinks the Commission should abide by the recommendations by the Committee. He said it is the Commission's job to look after the resource.

Mulligan said he is against introduction of exotic wildlife in Montana. Basically all of the organizations that deal with waterfowl are against mute swans, but the information does not support the concern. Mulligan suggested this issue go back to the Committee for rewrite.

Ryce said the specific control measures would be spelled out on the permit.

Colton said he is not comfortable with the data saying that there is a clear link between the mute swan and the detriment to the trumpeter – that standard has not been established. It is still in the rhetoric stage. We have a serious obligation not to follow rhetoric.

Action: Workman moved and Brenden seconded the motion to approve the final exotic wildlife administrative rules as recommended by the classification review committee with the exception of reclassifying the mute swan from prohibited to controlled. Colton amended the motion to defer action on the capuchin monkeys because the opponents could not attend the meeting. Doherty seconded the amendment.

Hagener said a precedent will be set if action is not taken because of absence of opponents due to distances to meetings.

Action: Colton withdrew his amendment.

Action: on Motion: Motion carried. Four in favor – one opposed (Doherty).

14. I-154 – Commission Discussion – Final. Director Jeff Hagener stated that I-154 is being appealed to Supreme Court after Great Falls District Judge Sandefur threw it out of court.

Bob Lane said FWP has not changed position since the last meeting.

Brenden said he thinks it's a moot issue. He feels the Supreme Court will uphold the other judge's ruling. Mulligan said it is clearly a negative impact for the FWP. Colton said it would be devastating to the sportsmen of Montana.

Action: Mulligan moved and Workman seconded the motion that FWP and the Commission take an official stand against initiative I154.

Brenden said there is a concern by private property owners that private property rights are being taken away. He will vote against it because he abhors taking private property rights for economic gain.

- Extend the pheasant season by two weeks in January
- Require two tags for ungulate species (one for head/antlers/horns and second for carcass)
- Open all WMAs for antler gathering at the same time during daylight hours
- Require hunters to choose between archery and rifle hunting
- Issue a cow elk tag along with bull elk tag in special permit areas to encourage taking of cows